No. 92-859

In the Supreme Court of the United States

OCTOBER TERM, 1992

RICHARD STEINMETZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WILLIAM C. BRYSON
Acting Solicitor General

STUART M. GERSON
Assistant Attorney General

ROBERT S. GREENSPAN
EDWARD T. SWAINE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the bell from the C.S.S. *Alabama*, a Confederate commerce raider sunk by the Union Navy off the coast of France in 1864, is the property of the United States.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	6
Conclusion	13

TABLE OF AUTHORITIES

Cases:

Baltimore, Crisfield & Onancock Line, Inc. v. *United States*, 140 F.2d 230 (4th Cir. 1944)	12
Columbus-America Discovery Group v. *Atlantic Mut. Ins. Co.*, 974 F.2d 450 (4th Cir. 1992), petition for cert. pending, No. 92-1189	10, 11
Deklyn v. *Davis*, 1 Hopk. Ch. 135 (N.Y. Ch. 1824)	12
Hatteras, Inc. v. *The U.S.S. Hatteras*, 1984 A.M.C. 1094 (S.D. Tex. 1981), aff'd mem., 698 F.2d 1215 (5th Cir. 1983)	12
Leathers v. *Salvor Wrecking Co.*, 15 F. Cas. 116 (C.C.S.D. Miss. 1875) (No. 8164)	7
Martha's Vineyard Scuba Headquarters, Inc. v. *Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059 (1st Cir. 1987)	10
OPM v. *Richmond*, 496 U.S. 414 (1990)	11
Osborn v. *Nicholson*, 80 U.S. (13 Wall.) 654 (1872), rev'g 18 F. Cas. 846 (C.C.E.D. Ark. 1870) (No. 10,595)	9
Rainey v. *United States*, 232 U.S. 310 (1914)	8
Royal Indem. Co. v. *United States*, 313 U.S. 289 (1941)	11
State by Ervin v. *Massachusetts Co.*, 95 So. 2d 902 (Fla. 1956), cert. denied, 355 U.S. 881 (1957)	12
State ex rel. Bruton v. *Flying "W" Enterprises, Inc.* 160 S.E.2d 482 (N.C. 1968)	12
The Adventure, 12 U.S. (8 Cranch) 221 (1814)	9

Cases—Continued: Page

The Alexander, 1 F. Cas. 357 (C.C.D. Mass. 1813) (No. 164), aff'd, 12 U.S. (8 Cranch) 168 (1814) 10
The Florida, 101 U.S. 37 (1880) 9
The Josefa Segunda, 23 U.S. (10 Wheat.) 312 (1825) 10
The Rebeckah, 1 C. Rob. 227 (1799) 10
Titus v. *United States*, 87 U.S. (20 Wall.) 475 (1874) 7
United States v. *California*, 332 U.S. 19 (1947) 5-6, 11
United States v. *Huckabee*, 83 U.S. (16 Wall.) 414 (1873) 7
Utah Power & Light Co. v. *United States*, 243 U.S. (1917) 11
Whitfield v. *United States*, 92 U.S. 165 (1876) 7
Whitney v. *Robertson*, 124 U.S. 190 (1888) 8
Williams v. *Bruffy*, 96 U.S. 176 (1878) 5, 7

Constitution and statutes:

U.S. Const.:
Art. V 9
Art. IV 12
§ 3, Cl. 2 ..... 4, 11
Amend. XIV 6, 7, 8, 9
§ 4 6
Repudiation Clause 7, 9
Act of Mar. 6, 1876, ch. 20, 19 Stat. 6 ..... 3, 5
Act of June 23, 1874, ch. 459, § 12, 18 Stat. 248 ..... 3, 5

Miscellaneous:

'Alabama' Bell Tests Don't Confirm That It's Authentic, The Civil War News, Jan.-Feb. 1992 .....
C.S.S. Alabama Bell Revealed A Hoax; Navy Continues to Press Court Case, The Confederate Naval Historical Society Newsletter, June 1992 .....
Famous Civil War Bell 'A Fake'—Dealer, The Hastings & St. Leonard's (Eng.) Observer, May 31, 1991 .....
H. Halleck, *International Law; or, Rules Regulating the Intercourse of States in Peace and War* (1861) 1

Page

10
9
10
10
7
6, 11
7
11
7
8
5, 7

9
12
4, 11
7, 8, 9
6
7, 9
3, 8
3, 8

3

3

3

10

Miscellaneous—Continued: Page

1 W. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers 1776-1909* (1910) (S. Doc. No. 357, 61st Cong., 2d Sess. (1910)) 3, 8

5 J.B. Moore, *History and Digest of International Arbitrations to Which the United States Has Been a Party* (1898) 8

Office of Legal Adviser, Dep't of State, Pub. No. 9610, 1980 *Digest of United States Practice In International Law* (1986) 9, 11

Roach, *France Concedes United States Has Title To C.S.S.* Alabama, 85 Am. J. Int.'L. 381 (1991) 13

Q. Wright, *The American Civil War (1861-65)*, in *The International Law of Civil War* 30 (R. Falk ed. 1971) .. 3

In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-859

RICHARD STEINMETZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-28) is reported at 973 F.2d 212. The opinion of the district court (Pet. App. 29-49) is reported at 763 F. Supp. 1293.

JURISDICTION

The judgment of the court of appeals was entered on August 21, 1992. A petition for rehearing was denied on September 18, 1992. The petition for a writ of certiorari was filed on November 18, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The C.S.S. *Alabama* was a steamship launched from the English port of Liverpool in 1862 to serve as a Confederate cruiser under the command of Captain Raphael Semmes. Its construction and launching by British subjects for use by the Confederacy was an apparent violation of Great Britain's neutrality, proclaimed by Queen Victoria in 1861. During the next two years, while roaming the Atlantic Ocean, the Gulf Coast, the African Cape, and the China Sea, she destroyed or captured at least 62 Union merchant and whaling ships and a variety of vessels from other nations. Pet. App. 4-5.

In June 1864, the *Alabama* encountered a Union ship, the U.S.S. *Kearsage*, in international waters near Cherbourg, France. Pet. App. 5-6. After a battle that lasted over an hour, the *Alabama*, badly damaged, struck its colors and raised the white flag of surrender. Captain Semmes gave the order to abandon ship. *Id.* at 6, 12. According to contemporary accounts from officers of the *Alabama*, the *Kearsage* fired on the *Alabama* after she had indicated her surrender, probably because the powder smoke haze around the *Alabama* made it difficult to see the white flag. *Id.* at 35 & n.1, 36; see also *id.* at 12. The firing apparently ceased after the white flag was displayed from the *Alabama*'s stern, for Captain Semmes then sent a dinghy filled with her wounded to the *Kearsage*. *Id.* at 6, 36 & n.1. As the *Alabama* sank, the captain and a number of the crew were picked up by a nearby English yacht, the *Deerhound*, which absconded with them to England, where they were set free. *Id.* at 6, 38.

Because of Great Britain's role in the construction of the *Alabama* and the escape of her crew, the *Alabama* was later the subject of a major international dispute. Senator Sumner and Secretary of State Fish expressed

the view that the direct and indirect damage wrought by the *Alabama* had prolonged the Civil War by two years, and sought as compensation the British cession of Canada. See Q. Wright, *The American Civil War (1861-65)*, in *The International Law of Civil War* 30, 102-103 (R. Falk ed. 1971). The United States' claims were eventually settled by an international arbitration tribunal, convened pursuant to the Treaty of Washington of 1871. The United States was awarded $15.5 million. Pet. App. 7; see Act of June 23, 1874, ch. 459, § 12, 18 Stat. 248; Act of Mar. 6, 1876, ch. 20, 19 Stat. 6; 1 W. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers 1776-1909*, at 700, 717, 722 (1910) (S. Doc. No. 357, 61st Cong., 2d Sess. (1910)).

2. According to petitioner, a New Jersey antiques dealer, the brass bell of the *Alabama* was recovered in 1936 by a British diver from the Isle of Guernsey, who sold it to a local bar in exchange for drinking privileges.[1] The bar was destroyed by bombing during World War II, and the bell later was dug from the rubble and introduced into the antiques market. Petitioner obtained the bell in

---

[1] The district court, and subsequently the court of appeals, relied on petitioner's testimony concerning the history of the bell and its origins. *E.g.*, Pet. App. 38-39. Some publications recently have suggested, however, that the petitioner may have been the victim of a hoax, and that the bell may not genuinely be that of the C.S.S. *Alabama*. See *'Alabama' Bell Tests Don't Confirm That It's Authentic*, The Civil War News, Jan.-Feb. 1992; *C.S.S. Alabama Bell Revealed A Hoax; Navy Continues to Press Court Case*, The Confederate Naval Historical Society Newsletter, June 1992, at 1; *Famous Civil War Bell 'A Fake'—Dealer*, The Hastings & St. Leonard's (Eng.) Observer, May 31, 1991. Notwithstanding those recent press reports, no persuasive evidence impugning petitioner's account respecting the origins of the bell has come to the attention of the United States to date, and the United States accordingly intends to retain possession of the bell.

1979 in exchange for approximately $12,000 worth of antique guns and pistols. Upon returning to New Jersey, petitioner offered to sell or trade the bell to the United States Naval Academy, which expressed interest in displaying the bell but refused to purchase it. Pet. App. 7.

3. In 1990, petitioner put the bell up for auction in New York. Upon learning of the auction, the United States filed a complaint in admiralty in the United States District Court for the District of New Jersey, seeking possession of the bell as property of the United States. Petitioner delivered the bell for deposit with the district court, and filed an answer and counterclaim for a determination that the bell was his property, for payment of full market value for the bell, and in the alternative for equitable compensation under the theories of quantum meruit or unjust enrichment. Pet. App. 8.

The district court granted summary judgment for the United States. Pet. App. 9; see *id.* at 29-49. The court found that the *Alabama* had been constructively captured by the *Kearsage* and thus became United States property at the time of the battle in 1864. *Id.* at 40-41. The district court alternatively found that the *Alabama* became United States property at the close of the Civil War, when the United States succeeded to the public property of the Confederacy. *Id.* at 41-42. Finally, the court held that the United States had never abandoned the wreck of the *Alabama*, noting that Congress and its authorized agents alone possessed the authority to dispose of United States property. *Id.* at 42-46, citing U.S. Const. Art. IV, § 3, Cl. 2. The court dismissed petitioner's counterclaims seeking compensation for lack of jurisdiction. Pet. App. 47-48.

4. The court of appeals affirmed, holding that the United States succeeded to the *Alabama* at the end of the Civil War, and never abandoned its interest in the wreckage. The court first rejected petitioner's claim

that because the *Alabama* was a "pirate" ship, the United States could not become her owner by succession. The court acknowledged that some Union officials had publicly referred to the *Alabama* and its crew as "pirates," but concluded that "all of the historical evidence suggests that the references to piracy were more rhetorical than legal." Pet. App. 14-15. That historical evidence included the Union's treatment of the Confederacy as a belligerent, its treatment of Confederate captives as prisoners of war (instead of executing them, as would have been the Union's right if they were indeed pirates), and the Navy Department's express refusal to prosecute Captain Semmes for piracy after the war. *Id.* at 15-17.

The court of appeals also rejected petitioner's claim that international law permits a sovereign to acquire property by succession only if that sovereign also assumes the debts and obligations directly related to that property—an assumption expressly prohibited by the Fourteenth Amendment. The court adverted to this Court's statement in *Williams* v. *Bruffy*, 96 U.S. 176, 188 (1878), that "[t]he very property" amassed by the Confederacy "passed to the nation" upon the Confederacy's defeat, as well as to statements to the same effect in other 19th century cases, and concluded that "whether or not historians would regard the international law of succession as applicable here, the succession doctrine, as explicated and applied by the United States Supreme Court with respect to the Civil War, entitled the United States to all property acquired by the Confederacy." Pet. App. 20-24.

Finally, the court of appeals rejected petitioner's claim that the United States abandoned its rights by failing to show any interest in the ship's salvage, thereby permitting anyone who found it to acquire title under the law of finds. Relying on this Court's decision in *United States*

v. *California*, 332 U.S. 19, 40 (1947), the court of appeals concluded that public property can be abandoned only by explicit acts, and not "by * * * acquiescence, laches, or failure to act." Pet. App. 24-27. In light of its conclusions on the succession and abandonment questions, the court of appeals found it unnecessary to address the district court's alternative conclusion that the United States acquired title to the *Alabama* by capture. *Id.* at 12-13.

ARGUMENT

The decision of the court of appeals that the *Alabama*'s bell is the property of the United States is correct, and does not conflict with any decision of this Court or of any court of appeals. Further review is not warranted.

1. Petitioner renews his contention that the United States did not acquire title to the bell of the *Alabama*. Pet. 8-11. Petitioner principally argues that Section 4 of the Fourteenth Amendment, which prohibits assumption of Confederate war debt by the United States or by any State, "barred the United States from succeeding to title to property owned by the Confederacy for which there was a corresponding liability or obligation." Pet. 8.[2] According to petitioner, "the outstanding obligation

---

[2] Section 4 provides that:

> The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

U.S. Const. Amend. XIV, § 4.

against the *Alabama* was its responsibility for the destruction of neutral ships and capture of neutral property during the course of its commerce raiding." Pet. 9.[3] There is no merit to petitioner's claim.

First, petitioner cannot seriously contest that the United States acquired title to property formerly held by the Confederacy upon the defeat of the Confederacy and the occupation of the territory over which it claimed jurisdiction. A long line of decisions of this Court so holds. See *Williams* v. *Bruffy*, 96 U.S. 176, 188 (1878); *Whitfield* v. *United States*, 92 U.S. 165, 169-171 (1876); *Titus* v. *United States*, 87 U.S. (20 Wall.) 475, 481-482 (1874); *United States* v. *Huckabee*, 83 U.S. (16 Wall.) 414, 434-435 (1873); see also *Leathers* v. *Salvor Wrecking Co.*, 15 F. Cas. 116 (C.C.S.D. Miss. 1875) (No. 8164). The so-called "Repudiation Clause" of the Fourteenth Amendment in no way casts doubt on that settled understanding. By its own terms, that Clause prohibits the assumption of Confederate *debts*; it does not prohibit the United States or any State from succeeding to an *asset* used "in aid of insurrection or rebellion" if no corresponding debts or obligations are assumed. Indeed, the logic of petitioner's argument—that no property may be acquired without assuming all liabilities attached to that property—suggests that the acquisition of any property that might have been reached to satisfy Confederate debts may be constitutionally precluded. Thus, for example, no state government could control former Confederate lands or facilities. The court of appeals correctly noted that no court in this country has ever subscribed to that proposition. Pet. App. 23.

---

[3] Petitioner briefly incorporates in a footnote his contention, made unsuccessfully below, that the *Alabama*'s reputation as a pirate vessel meant that it could not be attributed to the Confederacy at all (Pet. 8 n.1), but fails even to address the court of appeals' considered rejection of that argument. Pet. App. 14-18.

Petitioner offers no authority for his novel construction of the Fourteenth Amendment, but appears to contend instead that his interpretation is required by principles of international law. Pet. 9-10. As the court of appeals noted, it is far from clear that the succession doctrine that international law applies to the conquest of formerly independent nations applies *mutatis mutandis* to the peculiar circumstances of the Civil War. Pet. App. 23-24. In any event, it has long been established that Congress may exceed the limits imposed by international law by legislation. See, *e.g.*, *Rainey* v. *United States*, 232 U.S. 310, 316 (1914); *Whitney* v. *Robertson*, 124 U.S. 190, 194 (1888). That principle applies *a fortiori* to constitutional amendments. Because the Fourteenth Amendment expressly prohibits the assumption of Confederate debts, and does not restrict in any way the United States' ability to acquire Confederate property, any principle of international law requiring assumption of debts related to Confederate property before the United States may acquire that property by succession must give way to the command of the Constitution.[4]

Second, even accepting *arguendo* petitioner's gloss on the Fourteenth Amendment, petitioner's argument that the United States could not succeed to the wreck of the

---

[4] Indeed, as petitioner recognizes (Pet. 10 n.3), the United States essentially nullified any claims for losses to neutral shipping and cargo that he now espouses. In distributing through arbitral awards money given the United States by Great Britain, the United States provided that no claims would be allowed for persons not bearing allegiance to the United States. See Act of June 23, 1874, ch. 459, § 12, 18 Stat. 248; Act of Mar. 6, 1876, ch. 20, 19 Stat. 6; 1 W. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers 1776-1909*, at 700, 717 (1910) (S. Doc. No. 357, 61st Cong., 2d Sess. (1910)); 5 J.B. Moore, *History and Digest of International Arbitrations to Which the United States Has Been a Party* 4650-4651, 4653 (1898).

Alabama lacks chronological coherence. Assuming with petitioner that his argument should be assessed as of the close of the Civil War in 1865 (Pet. 9-10)—as opposed to now, when there are surely no viable claims against the *Alabama*—the Fourteenth Amendment was not then law, and could not prevent succession to the *Alabama*. The language of the Repudiation Clause is plainly prospective, and amendments to the Constitution are effective only when ratified. See U.S. Const. Art. V. This Court, moreover, held that the Civil War amendments did not ordinarily disturb vested rights. *Osborn* v. *Nicholson*, 80 U.S. (13 Wall.) 654 (1872), rev'g 18 F. Cas. 846 (C.C.E.D. Ark. 1870) (No. 10,595) (citing U.S. Const. Amend. 14, § 4). Because the constitutional provision on which petitioner relies post-dated the United States' acquisition of the wreck by succession, that provision cannot help petitioner's cause.

2. Even if the United States could not acquire title to the wreck of the *Alabama* by succession, the district court properly found that the *Alabama* became United States property when it was captured by the *Kearsage* in 1864. Pet. App. 40-41. Capture of an enemy vessel prior to its sinking confers title and ownership upon the government of the captors. See *The Florida*, 101 U.S. 37, 42 (1880); *The Adventure*, 12 U.S. (8 Cranch) 221, 226 (1814); Office of Legal Adviser, Dep't of State, Pub. No. 9610, 1980 *Digest of United States Practice in International Law* 999, 1000 (1986). Here, the *Alabama* surrendered to the *Kearsage*. Pet. App. 12, 41. While the *Kearsage* fired on the *Alabama* following her initial indication of surrender, most probably because of its inability to see the white flag raised by the *Alabama*, it apparently ceased after a white flag was more clearly displayed. Pet. App. 6, 36 & n.1.

The court of appeals did not resolve the issue of capture, but expressed doubt that a ship may be

constructively captured without physical control. Pet. App. 13. It is well settled, however, that "a voluntary surrender of authority, and an agreement to obey the captor, supplies the place of actual force" and effectuates a capture. *The Josefa Segunda*, 23 U.S. (10 Wheat.) 312, 325-326 (1825) (Story, J.); see also *The Alexander*, 1 F. Cas. 357, 360 (C.C.D. Mass. 1813) (No. 164) (Story, J.) (describing capture by "constructive possession"), aff'd, 12 U.S. (8 Cranch) 168 (1814). As a contemporary treatise noted, "capture is deemed complete when the surrender has taken place and the *spes recuperandi* [hope of regaining] is gone." H. Halleck, *International Law; or, Rules Regulating the Intercourse of States in Peace and War* 727 (1861). Absent further attempts to escape or retaliate, the striking of a vessel's colors "must be deemed the consummation of the capture." *The Rebeckah*, 1 C. Rob. 227 (1799). Accordingly, irrespective of petitioner's arguments challenging the United States' right to succeed to the property of the Confederacy, the *Alabama* and its bell belong to the United States by right of capture.

3. Petitioner also renews his contention that any interest acquired by the United States in the wreck of the *Alabama* was abandoned, entitling petitioner to possession under the law of finds. Pet. 11-14. The court of appeals properly held otherwise. Pet. App. 24-27.

The common law of finds expresses "the ancient and honorable principle of 'finders, keepers.'" *Columbus-America Discovery Group* v. *Atlantic Mut. Ins. Co.*, 974 F.2d 450, 459 (4th Cir. 1992) (quoting *Martha's Vineyard Scuba Headquarters, Inc.* v. *Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059, 1065 (1st Cir. 1987)), petition for cert. pending, No. 92-1189. The law of finds traditionally was applied to property never owned by anybody, such as whales and fish, but a "relatively recent trend in the law" has applied the law of finds to long

lost shipwrecks. *Columbus-America Discovery Group*, 974 F.2d at 459-460. Today, the law of finds is applied to such wrecks "only when that property has been abandoned by its previous owners." *Id.* at 461. We agree with petitioner (Pet. 12) that admiralty courts sometimes have invoked that doctrine to give title to finders of shipwrecks when the circumstances indicate that the true owners have abandoned the property. The cases cited by petitioner, however, involved abandonment of property owned by parties other than the sovereign. While petitioner has made no showing that he could meet even the standards of abandonment set forth in those cases, he errs fundamentally in assuming that courts may infer abandonment of *public* property under the law of finds in the absence of congressional authorization.

As the court of appeals recognized (Pet. App. 24-25), Article IV of the Constitution provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, Cl. 2. Relying in part on Congress's special responsibility in this area, this Court held in *United States* v. *California*, 332 U.S. 19 (1947), that the federal government may not be deprived of property interests by rules designed to resolve private disputes, and that "officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act." 332 U.S. at 40; see also *Royal Indem. Co.* v. *United States*, 313 U.S. 289, 294 (1941); *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409 (1917); cf. *OPM* v. *Richmond*, 496 U.S. 414, 424-434 (1990); see also 1980 *Digest of United States Practice in International Law*, *supra*, at 1004-1005 (states do not abandon warships sunk during military hostilities absent express consent). Petitioner cites no

authority that casts doubt on the applicability of that settled proposition in the present context.[5] Indeed, contrary to petitioner's claim that the decision below, "works a substantial and unwarranted change in the disposition of government property" (Pet. 12), private parties engaged in salvage operations recognize that different rules of abandonment apply to property owned by the sovereign. See Petition for Writ of Certiorari at 12 (No. 92-1189) (citing opinion of the court of appeals in this case). Because petitioner can point to no Congressional act that authorizes abandonment of the *Alabama*, his claim to public property was properly rejected by the court of appeals.

In sum, petitioner seeks resolution of a controversy that affects only the *Alabama*'s bell, and can advance no

---

[5] In fact, as the court of appeals noted, a lower court case involving the wreck of a ship sunk by the *Alabama* herself held that the United States Navy's formal abandonment of a sunken vessel did not constitute a lawful abandonment in light of Article IV. See *Hatteras, Inc.* v. *The U.S.S. Hatteras*, 1984 A.M.C. 1094 (S.D. Tex. 1981), aff'd mem., 698 F.2d 1215 (5th Cir. 1983).

The cases cited by petitioner are inapposite. In two cases, the United States deliberately destroyed its ships in target practice, thereby engaging in conduct that could reasonably be interpreted as authorized and express abandonment, see *Baltimore, Crisfield & Onancock Line, Inc.* v. *United States*, 140 F.2d 230, 234 (4th Cir. 1944); *State by Ervin* v. *Massachusetts Co.*, 95 So. 2d 902, 903 (Fla. 1956), cert. denied, 355 U.S. 881 (1957). In another case, the State in fact retained sovereign possession of a Spanish privateer and Confederate blockade runners, *State ex rel. Bruton* v. *Flying "W" Enterprises, Inc.*, 160 S.E.2d 482, 494 (N.C. 1968). In the last case cited by petitioner, two salvage crews attempted to raise a derelict British frigate that had been sunk in the revolutionary war. When one of the crews sought an injunction to keep its competitor away, the court refused to issue it on the ground that each party's claim of title was "doubtful." *Deklyn* v. *Davis*, 1 Hopk. Ch. 135, 141-143 (N.Y. Ch. 1824). Pet. 14 n.6. None of these cases casts doubt on the conclusion reached by the court of appeals here.

convincing argument either that the court of appeals reached the wrong result or that the issue he raises is one of continuing significance. Since petitioner purchased the bell in 1979, the wreck of the *Alabama* was rediscovered by French divers in what are now French territorial waters, and France has now agreed that title to the *Alabama* and its artifacts has remained in the United States since 1864. See Roach, *France Concedes United States Has Title To C.S.S.* Alabama, 85 Am. J. Int'l L. 381, 382 (1991). The court of appeals' decision that the *Alabama*'s bell similarly belongs to the United States should not be disturbed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WILLIAM C. BRYSON
Acting Solicitor General

STUART M. GERSON
Assistant Attorney General

ROBERT S. GREENSPAN
EDWARD T. SWAINE
Attorneys

FEBRUARY 1993